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March 16, 2012

Via Federal Express and ECFS

Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743
(PHONE NO.: 888-225-5322)

Re: *In the Matter of Request for Review by Providence Seward Medical and Care Center* (also referred to in USAC's letter of January 16, 2012, as *Providence Seward Mountain Haven*) of Decision of Universal Services Administrator
Docket No. 02-60
HCP No. 10382
Packet Nos. 4 102861 and 102862
Our File No. 3085.01

Dear Sir/Madam:

This office represents Providence Seward Medical and Care Center in connection with this request for a further review/appeal of USAC's Administrator's Decision on Rural Health Care Program Appeal dated January 16, 2012, a copy of which is attached as Ex. 1. This request is made pursuant to 47 CFR §54.719(c). We are filing this appeal electronically by the Electronic Comment Filing System (ECFS) pursuant to USAC's instructions for filing Rural Health Care funding decision appeals. We are also filing two copies by Federal Express to ensure compliance with your filing requirements and as a courtesy copy or in the event that two copies are required.

This is the second request for further review/appeal (appeal) of a USAC Administrator's determination of funding for these two T-1 circuits servicing Providence Seward Medical and Care Center in Seward, Alaska. The first appeal was filed with the FCC on September 24, 2011, and pertains to USAC's funding determination for the two T-1 circuits for Funding Year 2009 (FY 2009). That appeal is still pending with the FCC. This second appeal pertains to USAC's funding determination for the same T-1 circuits for Funding Year 2010 (FY 2010).

FACTS

Providence Seward Medical and Care Center (PSMCC) is a rural health care provider in Seward, Alaska. Seward has a population of approximately 3,000 and is located in the southcentral region of Alaska, at the head of Resurrection Bay on the eastern shore of the Kenai Peninsula, a rugged largely wilderness area, with a significant mountain range running the length of the peninsula close to the eastern shore. See Ex. 2 – map of Alaska. Access to Seward is limited to small airplane, helicopter, boat, seasonal train, and by vehicle via one road that stretches 126 miles north to Anchorage, Alaska's largest city.

PSMCC consists of a six-bed acute care facility and a 43-bed long term care facility. Its services include emergency, inpatient hospital care, laboratory, radiology, rehabilitation, respiratory therapy, family care clinic, home health care, and long term care.

The facility is owned by the city of Seward, and managed by Providence Health & Services. Providence Health and Services (PHS) is a not-for-profit network of hospitals, care centers, health plans, physicians, clinics, home health services, affiliated services and educational facilities that span five states, including Alaska. One of the PHS facilities is the Providence Alaska Medical Center (PAMC), which is located in Anchorage and is Alaska's largest hospital. As a PHS managed facility, PSMCC has access to many of PAMC's services, including the services of radiologists and pathologists who interpret the imaging and lab services that are provided at PSMCC, and the Electronic Medical Record (EMR) data center.

All of PSMCC telecommunication (T-1) circuits connect back to PAMC and are used primarily for transmitting digital imaging (PACS, CT, X-ray), biomedical resources (drug libraries, instruction or information on pumps, etc.), facility operations, and Electronic Medical Records (EMR).

The use of and tie-in to PAMC's EMR plays an important role in the delivery of health care in the small rural community of Seward. It provides a single repository for all patient information and can be accessed across the continuum of care (e.g., PAMC, and physician offices). For the vast majority of heart attack, stroke, and traumatic injury patients on the eastern side of the Kenai Peninsula, PSMCC is the only place where they can be stabilized and given initial treatment before being transferred to a tertiary care center, which is almost

always PAMC. Electronic medical records facilitate the emergency room treatment and transfer of these patients and contribute to high quality emergency and trauma care equivalent to that available in Anchorage, Alaska's largest urban center.

For many years, PSMCC relied on two T-1 land circuits supplied by carrier GCI that traveled between Seward and Anchorage through the Chugach Mountain Range. These circuits traverse through several mountain passes that are subject to avalanches, high wind, and other adverse climatic conditions that have subjected the circuits to outages during winter months, which in Alaska are particularly lengthy and which have impacted patient care and safety at PSMCC. In addition, the single roadway connection between Seward and Anchorage is subject to being periodically closed for between several hours and several days, several different times each winter, due to avalanches that block the roadway. This reality combined with stretches in the winter when small plane travel in and out of Seward becomes impossible as a result of prolonged adverse weather conditions results in periodic instances when seriously injured or seriously ill patients cannot be medivaced to Anchorage necessitating periodic interim intensive care at PSMCC, during which absolutely reliable communications can make the difference between life and death.

Over the past three and one-half years, PSMCC's reliance on PAMC and its staff of advanced practitioners for the operation of its clinic, emergency department, and radiology and lab services has grown significantly. This growth, along with implementation of the EMR database has increased the need for uninterrupted connectivity with PAMC.

In the spring of 2009, PSMCC explored available telecommunication options that could provide PSMCC's circuits with increased bandwidth, redundancy and diversity to maintain PSMCC's operations without interruption in connectivity. It was determined that the only option¹ available that could provide geographic and carrier diversity and redundancy was a submarine fiber optic circuit, already then in existence, that traverses from Seward to Kodiak Island and from Kodiak Island to Anchorage. See Ex. 3 – map of all cable circuitry in Alaska with a blow up of the circuitry servicing Seward. AT&T submitted a proposal to provide PSMCC with two T-1 private line submarine fiber optic circuits at a custom fiber rate that was not a mileage based rate.

¹ Satellite service is not a viable option due to its high latency rate.

On July 31, 2009, PSMCC finance officer, Maryann Freepartner, submitted a Form 465 to USAC for the two additional T-lines to transmit data and medical images, including X-rays and CT-scans, view dictation and lab results, and to access EMR. The Form 465 was successfully posted to USAC's website. No competitive bids were subsequently received in response to the posting.

On August 28, 2009, PHS entered into an agreement with AT&T to provide PSMCC with two private line circuits at a custom fiber rate with a total monthly recurring charge of \$9,005.20 per line. See Ex. 4 – Pricing Schedule.

On November 3, 2009, the two T-1 circuits were installed.

Following installation of the circuits PSMCC Finance Officer Maryann Freepartner worked with AT&T in gathering the information necessary to submit Form 466s for the T-1 circuits.

On February 22, 2010, Ms. Freepartner submitted the Form 466s for the two T-1 lines for FY 2009. Ex. 5. Since the pricing for the T-1 circuits was not distance based, funding was requested using the Comprehensive Rate Comparison method.

Following submission of the Form 466s, various email requests for additional information were received from USAC Reviewer Hazel Diaz. Ms. Freepartner, being new to her position as Finance Officer at PSMCC, worked with AT&T Representative Amy Merchant in obtaining the requested information, which she in turn provided to USAC Reviewer Ms. Diaz.

Through a letter dated September 30, 2010, two hundred twenty-five days after submission of the Form 466s, and well into the FY 2010 funding year, Ms. Freepartner finally received Funding Commitment Letters for the two circuits for FY 2009. These letters reflected funding amounts for the circuits at rates considerably reduced from what Ms. Freepartner had requested and anticipated based on the actual cost per line per month. See Ex. 6 - Funding Commitment Letters.

On October 12, 2010, in response to a request from Ms. Freepartner for an explanation of the funding computation, Ms. Diaz sent an email to Ms.

Freepartner explaining that funding was reduced based on information received from AT&T representative Andy Rabung² in response to a request from Ms. Diaz regarding mileage charges associated with the PHS contract. See Ex. 7 - 10/13/10 6:58 a.m. email from H. Diaz to Maryann Freepartner. In her email, Ms. Diaz explained that the rural rate was adjusted based on information obtained from Mr. Rabung that reflected total billed miles for the circuits at 475 miles, that the cost per mile for the circuits was \$17.62 per mile, and that USAC could only cover funding up to the Maximum Allowable Distance of 85 miles, which reduced the funding by \$6,871.80 per line (charges over the MAD).

On October 14, 2010, Ms. Freepartner provided Ms. Diaz with a letter from AT&T which stated that the circuit costs for the PSMCC circuits were not mileage based, but were calculated based on the contract.

On October 15, 2010, Ms. Diaz informed Ms. Freepartner that if she did not agree with the information provided in the funding commitment letters, she could follow up with a formal appeal.

On October 26, 2010, Ms. Freepartner submitted her letter of appeal or request for reconsideration of the FY 2009 funding determination to USAC's RHCD. Ex. 8.

On April 1, 2011, Ms. Freepartner sent an email to USAC RHC Manager Elizabeth Anderson asking if she should proceed with filing the form 466s for the two T-1 circuits for FY 2010 while the appeal for FY 2009 was still pending. Ms. Anderson responded that Ms. Freepartner could file her FY 2010 Form 466s while the appeal was still pending.

On April 8, 2011, Ms. Freepartner submitted her Form 466s for the two T-1 lines. Ex.11.

On June 13, 2011, after many, many requests for status updates and being informed that PSMCC's request for reconsideration of the FY 2009 funding determination was "under review" and a call to USAC's complaint line, Ms. Freepartner was able to speak with USAC Rural Health Care Program Manager

² Mr. Rabung had been recently assigned to cover temporarily the PSMCC account in the absence of Amy Merchant, the AT&T representative who had been working on the account from its inception, and who was at that time on temporary maternity leave from AT&T.

Carol McCornac who informed Ms. Freepartner that USAC's reduction in funding based on miles exceeding the Maximum Allowable Distance had been correctly applied. Ms. McCornac informed Ms. Freepartner that PSMCC could continue to pursue the appeal, which would result in a formal Administrators Decision, or request its withdrawal. Ms. Freepartner subsequently requested a formal Administrator's Decision.

On July 1, 2011, in response to a request from Ms. McCornac, Ms. Freepartner sent Ms. McCornac an explanation of the basis for the need for the Anchorage-Kodiak-Seward route in lieu of an Anchorage-Seward route. See Ex. 9 - 7/1/11 11:07 a.m. email from Maryann Freepartner to Carol McCornac.

On July 27, 2011, two hundred seventy-four days after PSMCC filed its request for reconsideration of the FY 2009 funding determination, USAC issued its Administrator's Decision. Ex. 10. In its decision, USAC denied PSMCC's appeal based on the Maximum Allowable Distance limitation.

Through a letter dated September 8, 2011, one hundred fifty-two days after submission of the Form 466s and over two months into the FY 2011 funding period, Ms. Freepartner received Funding Commitment Letters for the two circuits for FY 2010. Ex.12. Consistent with its funding determination for FY 2009, USAC, again, adjusted the rural rate for the two circuits based on the Maximum Allowable Distance calculation.

On September 23, 2011, PSMCC, filed its request for further review/appeal of USAC's FY 2009 funding determination with the Federal Communications Commission. Ex. 13. That appeal remains currently pending with the FCC.

On October 28, 2011, Ms. Freepartner submitted her letter of appeal/request for reconsideration of USAC's funding determination for FY 2010 to USAC's RHCD. Ex.14.

On January 16, 2011, eighty days after PSMCC filed its request for reconsideration of the FY 2010 funding determination, USAC issued its Administrator's Decision. Ex. 1. In its decision, USAC again denied PSMCC's appeal based on the Maximum Allowable Distance limitation.

QUESTION PRESENTED FOR REVIEW: DID USAC CORRECTLY
CALCULATE THE AMOUNT OF SUPPORT FOR PSMCC'S T-1 CIRCUITS?

I. USAC incorrectly applied a mileage-based charge

In its funding decision, USAC relies on vague communications between USAC's Ms. Diaz and AT&T's Andy Rabung converting the rate charge and the mileage involved into a cost per mile, which USAC in turn erroneously relies on in denying most of PSMCC's funding request. Mr. Rabung was not involved in the negotiations with PHS for the purchase of the T-1 lines, and at the time USAC sent AT&T the email requesting a breakdown of "billed circuit miles, monthly mileage based charges, and cost per mile" he had only recently been assigned temporarily to cover the PSMCC account in the absence of AT&T Representative Amy Merchant, who was the person directly involved for AT&T in negotiations for the purchase of the T-1 lines service, their installation, and billing, and who had worked with Ms. Freepartner in filing the initial Form 466s. The information provided by Mr. Rabung was incorrect. The charge for the circuits was not a mileage-based charge. In spite of being apprised of this fact before making its initial determination, USAC nonetheless made its funding determination based on a fictitious mileage-based charge.

II. PSMCC is entitled to advanced telecommunication services at rates that are reasonably comparable to rates charged for similar services in urban areas.

The Universal Service program is administered under authority of 47 USC §254. 47 USC §254(b)(6) provides that the Joint Board and the Commission shall base policies for the preservation and advancement of universal service on the following principles:

(1) Quality and rates

Quality services should be available at just, reasonable, and affordable rates.

(2) Access to advanced services

Access to advanced telecommunications and information services should be provided in all regions of the Nation.

(3) Access in rural and high cost areas

Consumers in all regions of the Nation, including low-income and those in rural, insular and high cost areas, should have access to telecommunications and information services, including interexchange and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

....

(6) Access to advanced telecommunications services for schools, health care, and libraries

... health care providers ... should have access to advanced telecommunication services as described in subsection (h) of this section.

(7) Additional principles

Such other principles as the Joint Board and the Commission determine are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with this chapter.

47 USC §254(h)(1)(A) provides:

A telecommunications carrier shall, upon receiving a bona fide request, provide telecommunications services which are necessary for the provision of health care services in a State ... to any public or nonprofit health care provider that serves persons who reside in rural areas in that State at rates that are reasonably comparable to rates charged for similar services in urban areas in that State (emphasis added).

III. The Maximum Allowable Distance limitation should not be applied as it results in a rate that is not reasonably comparable.

The purpose of the universal service program is to afford rural health care providers the opportunity to access telecommunications and information services

that are "reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas." 47 USC §254(b)(3).

Given PSMCC's unique circumstances – its remote location, the mountainous terrain and adverse climatic conditions that impact the functionality of terrestrial wirelines that service Seward, and the fact that the only alternative form of wireline service that could provide the needed bandwidth, diversity and redundancy is a submarine fiber optic cable that, of necessity, runs a course of 475 miles - applying the maximum allowable distance limitation under 47 CFR §54.613 is inconsistent with the purpose and legislative intent of the Universal Service mechanism.

IV. PSMCC has been unfairly prejudiced by the extraordinary delays associated with USAC's determinations.

As a final point in support of this appeal, PSMCC wishes to point out that it has been unfairly prejudiced by the extraordinary delays associated with USAC's determinations at virtually each stage of the process. The USAC did not make an initial decision on the first year of funding for these lines for FY 2009 until three months after the conclusion of FY 2009 funding period, and three months into the FY 2010 funding period, a total of two hundred twenty-five days after submission of the Form 466s for FY 2009. USAC then took a total of an additional two hundred seventy-four days to make a decision on PSMCC's request for reconsideration of its determination on FY 2009 funding, a step that PSMCC was encouraged to take before appealing to the FCC. Thus, the USAC had PSMCC's request for FY 2009 funding under consideration for a total of four hundred ninety-seven days before making a final decision on July 27, 2011, almost a month past the FY 2010 funding period and a month into the FY 2011 funding period.

USAC required an additional one hundred fifty-two days after submission of the Form 466s for FY 2010 funding to make an initial determination on FY 2010 funding, three months past the end of the FY 2010 funding period. The fact that the USAC delayed a decision on funding for FY 2009, the first year for these lines, until past the end of the second year funding period has severely prejudiced PSMCC with respect to both years' funding. It put PSMCC into a position where it had not received a determination on first year funding until after the entire costs of second year funding had been incurred. As such, USAC's administration of this program, in this instance, has been abusive and funding

should accordingly be approved for FY 2010 on this basis alone, based on PSMCC's detrimental reliance on USAC's reasonable administration of the universal services program.

REQUEST FOR RELIEF


It cannot be overemphasized that the sole alternative for reliable communication services for PSMCC comparable to those available in an urban setting are these underwater T-1 lines that simply happen to run from Anchorage to Kodiak and Kodiak to Seward. There is no other alternative. Accordingly, funding should be calculated based on a comprehensive rate comparison method which would result in PSMCC paying a rate that an urban health care provider would pay for similar services. That calculation for the period ending June 30, 2011, is attached as Ex. 15.

Appellant provider PSMCC requests a hearing on this request for review/appeal and reserves the right to submit supplemental material in support of its appeal as appropriate. To the extent that this appeal is deemed to raise novel questions of fact, law or policy, a hearing is requested before the full Commission.

DATED this 16th day of March, 2012, at Anchorage, Alaska.

GRUENSTEIN & HICKEY

Attorneys for Providence Health & Services – Alaska

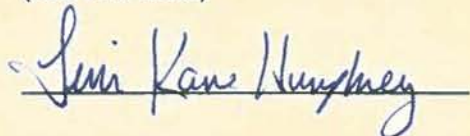
By: 
Daniel W. Hickey, ABA #7206026

cc: Susan Humphrey-Barnett
Area Operations Administrator
Providence Health & Services – Alaska

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by Federal Express this 16th day of March, 2012, on:

Rural Health Care Division
Universal Service Administrative Company
2000 L Street, NW, Suite 200
Washington, D.C. 20036
(202-776-0200)

A handwritten signature in blue ink, reading "Lini Kane Humphrey", is written over a horizontal line.